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EXAMINER

VO, HAI

ART UNIT

PAPER NUMBER

1771

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,001

Applicant(s)

TAYLOR, JACK D.

Examiner

Hai Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47-57 is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-16, 18, 19, 41-46 and 58 is/are rejected.
- 7) ☒ Claim(s) 9, 10 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 11-15, 18, 19 and 58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kaneko et al (US 5,445,862) substantially as set forth in Paper no. 7. With regard to newly added claim 58, Kaneko teaches a microporous film layer further containing a stabilizer (column 5, line 48).
4. Claim 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko et al (US 5,445,862) as evidenced by Nogiwa et al (US 4,793,956). Kaneko teaches the porous film having excellent stretchability with a stretch ratio of 1.1 to 3 fold at least in one direction (column 4, line 15, and column 7, line 29). As to the stretch ratio, it is determined in consideration of the balance between mechanical properties and moisture permeability both required for the porous film. Nogiwa discloses that it is desirable to effect stretching at a low stretch ratio

of 1.5 to 4 to obtain a porous film having well-balanced physical properties, including both of a high permeability and a high mechanical strength (US 4,793,956, column 7, lines 53-60). The porous film of Kaneko has a moisture permeability within the claimed range and the claim does not necessarily require a stretch ratio greater than 4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the porous film having a stretch ratio of 4 motivated by the desire to a porous film having well-balanced physical properties, including both of a high permeability and a high mechanical strength.

5. Claims 41, 42, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko et al (US 5,445,862) in view of Vander Wielen et al (US 4,720,415). Kaneko teaches an elastic film can be used in diapers and feminine care products (column 3, lines 15-16). Vander Wielen teaches an elastic film layer can be incorporated into a laminate such as a stretched-bonded laminate (column 4, lines 18-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an elastic film in the stretch-bonded laminate because such is the intended use of the materials in the field of the disposable diapers.
6. Claims 41, 43, 44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko et al (US 5,445,862) in view of Morman (US 5,336,545). Kaneko teaches an elastic film can be used in diapers and feminine care products (column 3, lines 15-16). Morman teaches an elastic film layer can

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be incorporated into a laminate such as a neck-bonded laminate (column 4, lines 18-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an elastic film in the neck-bonded laminate because such is the intended use of the materials in the field of the disposable diapers.

7. Claims 1-4, 7, 8, 11-13, and 41 are rejected under 35 U.S.C. 102(e) as anticipated by Ying et al (US 6,245,401) substantially as set forth in Paper no. 7.

Response to Arguments

8. The art rejections over Kaneko have been maintained for the following reasons. The replacement of "comprising" by "consisting essentially of" does not overcome the art rejections over Kaneko. According to MPEP 2112; In re Delajarte 143 USPQ 256, Applicant bares the burden of proof in establishing that non-recited component, especially an ethylene-alpha-olefin copolymer, materially changes the characteristics of Applicant's invention. Further, In re Janakirama-Rao, 137 US PQ893, there is no evidence in the specification to demonstrate that the inclusion of the ethylene-alpha-olefin copolymer affects the novel or basic characteristics of Applicant's invention. Kaneko teaches a porous film comprising an ethylene-alpha-olefin copolymer, a polyurethane elastomer that includes a soft segment consisting of a polyether or a polyester and a hard segment consisting of a glycol and a diisocyanate and an inorganic filler and having a WTVR of 2000 g/m² – 24 hours within the claimed range (abstract, column 4, lines 59-62). Kaneko teaches the porous film having excellent flexibility, the

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strength at 50% elongation of 100-500 g/ 25 mm (column 6, lines 32-35) and a stretch ratio of 1.1 to 3 fold at least in one direction (column 7, line 29). Likewise, it is clearly apparent that the presence of the non-recited component, especially an ethylene-alpha-olefin copolymer, does not materially change the characteristics of Applicant's invention.

9. The 102 art rejections over Ying have been maintained for the following reasons.

The arguments that Ying does not disclose a porous polyurethane film containing a filler are not found persuasive. Ying does disclose a porous polyurethane film containing a filler (column 5, lines 58-60, and column 8, line 30). Ying does not limit his invention to an embodiment disclosed in column 10, line 55 et seq. as argued by Applicant. In view of the present amendment, the 102 art rejections over Ying have not been overcome. According to MPEP 2112; In re Delajarte 143 USPQ 256, Applicant bares the burden of proof in establishing that non-recited components such as polyolefin materially changes the characteristics of Applicant's invention. Further, In re Janakirama-Rao, 137 US PQ893, there is no evidence in the specification to demonstrate that the inclusion of polyolefin affects the novel or basic characteristics of Applicant's invention.

10. The 103 art rejections over Ying have been overcome by the present response (page 8 of Paper no. 8).

Allowable Subject Matter

11. Claims 47-57 are allowed.

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12. Claims 9, 10, 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the prior art teaches or discloses an elastic film comprising a microporous film layer as defined in claim 1 or claim 14 wherein the film layer has an unbiased length in addition to the original length and the stretched length; and wherein, after being stretched from its original length to the stretched length, the film layer is relaxed to the final unbiased length, wherein the final unbiased length being at least two times the original length.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV
August 5, 2003


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700